66512-95

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

NCMIC INSURANCE COMPANY, PSIC INSURANCE COMPANY,	)	
	)	
Plaintiffs,	)	Case No.
	)	
vs.	)	
	)	District Judge:
STEPHANIE BELL, KEVIN BELL, MULTI-CARE SPECIALISTS, S.C., MARY VESCI AND ANTHONY VESCI,	)	Magistrate Judge:
	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COME Plaintiffs, NCMIC INSURANCE COMPANY and PSIC INSURANCE COMPANY, and for their Complaint for Declaratory Judgment against Defendants, STEPHANIE BELL, KEVIN BELL, MULTI-CARE SPECIALISTS, S.C., MARY VESCI and ANTHONY VESCI, state as follows:

Parties

1. Plaintiffs, NCMIC Insurance Company and PSIC Insurance Company are Iowa Corporations with their principal place of business in Clive, Iowa. Plaintiffs are citizens of Iowa.

2. Defendant Stephanie Bell is a resident and citizen of Illinois.

3. Defendant Kevin Bell is a resident and citizen of Illinios.

4. Defendant Multi-Care Specialists, S.C. is an Illinois corporation with its principal place of business in Granite City, Illinois.

5. Defendants Mary Vesci and Anthony Vesci are residents and citizens of Illinois.

Jurisdiction and Venue

6. Jurisdiction is proper under 28 USC §1332(a)(1) since this is an action between citizens of different states and the amount in controversy exceeds $75,000 exclusive of interests and costs.

7. Jurisdiction is also proper under 28 USC §2201(a) because a case of actual controversy exists in connection with the partys' rights and obligations under certain insurance policies issued by Plaintiffs and this Court has jurisdiction to declare the rights and legal obligations of any interested party seeking relief.

8. Venue is proper in this Court pursuant to 28 USC §1391(b)(1) because the Defendants reside in Illinois and in this judicial district. Venue is also proper under 28 USC §1391(b)(2) because a substantial part of the events and transactions giving rise to the claim occurred in this judicial district.

Factual Background

9. Defendants Mary Vesci and Anthony Vesci are the plaintiffs in a lawsuit captioned *Mary Vesci and Anthony Vesci v. Stephanie Bell, Kevin Bell and Multi-Care Specialists, S.C.*, which is pending in the Circuit Court of Madison County, Illinois under Court No. 2017 L 000451. A copy of the *Vesci* Complaint is attached as Exhibit A.

10. The *Vesci* Complaint alleges that Mary Vesci was a patient of Defendant Multi-Care Specialists, that her primary physician was Defendant Kevin Bell and that Kevin Bell referred Mary Vesci to Defendant Stephanie Bell for treatment of varicose veins and cosmetic issues.

11. The *Vesci* Complaint alleges that Mary Vesci saw Stephanie Bell on August 10, 2015 for a minor cosmetic issue and that at that time Stephanie Bell treated her prominent temporal veins with a sclerosing agent. However, Stephanie Bell injected the sclerosing agent into Mary Vesci's temporal artery. As a result of the improper injection, Mary Vesci suffered

massive damage to her temporal artery, necrosis to the tissue on the left side of Mary Vesci's head, blisters, sores, skin loss, hair loss and permanent scarring and hair loss.

12. The *Vesci* Complaint alleges that Kevin Bell was made aware of Mary Vesci's complaints after the erroneous injection by Stephanie Bell, but assured Mary Vesci that she would be fine, was already healing, and needed no further treatment.

13. The *Vesci* Complaint alleges numerous negligent acts or omissions on the part of the Defendants, including allowing Stephanie Bell to inject Mary Vesci with a sclerosing agent without proper training and supervision and without a physician being present, and failing to appropriately treat Mary Vesci after learning of her injury. The Defendants are also alleged to have been negligent for practicing outside the scope of their professional practice and for using a sclerosing agent in a manner that is not recommended or intended.

14. Prior to the filing of the *Vesci* Complaint, Kevin Bell notified PSIC of the Vesci claim and provided information to PSIC from which PSIC learned that Kevin Bell and Stephanie Bell are married; that the treatment Stephanie Bell provided to Mary Vesci on August 10, 2015, was provided at the Bells' home and that Mary Vesci and other patients received sclerosing agent injections from Stephanie Bell for varicose and spider veins prior to August 10, 2015.

15. NCMIC issued a Chiropractic Malpractice Policy to Defendant Multi-Care Specialists under Policy No. MP00916476, with a policy period of June 3, 2015 to June 3, 2016. A copy of the NCMIC Policy is attached as Exhibit B.

16. PSIC issued a Physician and Surgeon Professional Liability Policy to Kevin Bell under Policy No. PPL505149 with a policy period of April 10, 2015 to April 10, 2016. A copy of the PSIC Policy is attached as Exhibit C.

17. By this declaratory judgment action, NCMIC and PSIC request a finding that their respective policies do not provide coverage for the *Vesci* Complaint. Therefore, NCMIC and

PSIC do not have a duty to defend or indemnify Multi-Care Specialists, S.C., Stephanie Bell and Kevin Bell in the *Vesci* lawsuit.

COUNT I - THE NCMIC POLICY DOES NOT COVER THE *VESCI* COMPLAINT

18. Plaintiff NCMIC repeats and realleges paragraphs 1 through 17 as if fully set forth herein.

19. The NCMIC Chiropractic Malpractice Policy issued to Multi-Care Specialists provides the following coverage to an insured:

> "Within the limit of liability shown on the Declarations:
>
> 1. **We** will pay on behalf of an **insured** all sums to which this insurance applies and for which an **insured** becomes legally obligated to pay as **damages** because of an **injury**. The **injury** must be caused by an accident arising from an **incident** during the **policy period**. The **injury** must also be caused by an **insured** under this policy.
>
> 2. **We** will also pay on behalf of the entity listed on the Declarations all sums for which this insurance applies and which the entity becomes legally obligated to pay as **damages** because of an **injury**. The **injury** must be caused by an accident arising from an **incident** during the **policy period**. The **injury** must also be caused by **you** or by an employee or independent contractor for whose **professional services** the entity is legally liable. The entity will share the limit of liability stated in the Declarations with **you.**
>
>   An employee or independent contractor does not include any licensed Doctor of Medicine or Doctor of Osteopathy."

20. The NCMIC Policy defines "persons insured" by the policy to include, in pertinent part, the following:

> "**Persons Insured Amendatory Endorsement**
>
> Item 3 of the 'Persons Insured' section of the policy is deleted in its entirety and replaced as follows:
>
> 3. Each registered, certified, licensed or unlicensed chiropractic assistant; each licensed or unlicensed massage therapist; each registered or licensed practical nurse or unlicensed ancillary personnel employed by **you**, but only if they are acting within the scope and course of their

employment duties in the providing of **professional services**. Also, they must be under the supervision of a licensed chiropractor.

The last paragraph of the 'Persons Insured' section of the policy is deleted in its entirety and replaced as follows:

'Persons Insured' does not include any other licensed health care providers including but not limited to other licensed chiropractors, except the **insured** and those licensed health care providers listed in Item 3 above."

21. The NCMIC Policy contains the following pertinent definitions:

"5. **Incident** means any negligent omission, act or error in the providing of **professional services** by an **insured** or any person for whose omissions, acts or errors an **insured** is legally responsible. All such omissions, acts or errors causally related to the rendering of or failure to render **professional services** to one person shall be considered one **incident**. Causally related acts, errors and omissions includes acts, errors and omissions that have a common cause or form a causal chain of events. An **incident** shall be deemed to have occurred at the time of the earliest act, error or omission comprising that **incident**.

* * *

8. **Professional Services** means services which are within the scope of practice of a chiropractor in the state or states in which the chiropractor is licensed.

Professional Services does not include any services furnished by an **insured** as a practitioner of any other healing or treating art."

22. The NCMIC Policy does not provide coverage to Multi-Care Specialists for the *Vesci* Complaint because the Complaint does not allege a potentially covered incident as that term is defined by the policy. Treating a patient with a sclerosing agent as alleged in the *Vesci* Complaint is not a service within the scope of practice of a chiropractor in the State of Illinois; therefore, the NCMIC Policy does not provide coverage for the *Vesci* Complaint.

23. The NCMIC Policy does not provide coverage to Multi-Care Specialists for the alleged acts or omissions of Kevin Bell because the allegations against Kevin Bell do not come within the scope of practice of a chiropractor and because the policy does not cover an entity for vicarious liability arising from the negligence of a licensed doctor of medicine.

24. Stephanie Bell is not a person insured under the NCMIC Policy issued to Multi-Care Specialists because even if she was employed by Multi-Care Specialists as alleged in the *Vesci* Complaint, she was not providing services to Mary Vesci within the scope of practice of a chiropractor at the time of the occurrence alleged in the complaint.

25. Kevin Bell is not an insured under the NCMIC Policy because he is not listed in the policy's Declarations nor does he come within the "persons insured" provision of the policy.

26. Since the NCMIC Policy does not potentially provide coverage to Multi-Care Specialists for the *Vesci* Complaint and Stephanie Bell and Kevin Bell do not qualify as insureds under the NCMIC Policy, NCMIC does not have a duty to defend or indemnify Multi-Care Specialists, Stephanie Bell and Kevin Bell in the *Vesci* lawsuit.

WHEREFORE, Plaintiff, NCMIC INSURANCE COMPANY, requests that this Court find and declare that NCMIC does not have a duty to defend or indemnify Multi-Care Specialists, S.C., Stephanie Bell and Kevin Bell in the *Vesci* lawsuit

COUNT II – THE PSIC POLICY DOES NOT COVER THE *VESCI* COMPLAINT

27. PSIC repeats and realleges paragraphs 1 through 17 as though fully set forth herein.

28. The PSIC Physician and Surgeon Professional Liability Policy issued to Kevin Bell provides the following coverage:

> "Within the limit of liability shown on the **Declarations**:
>
> In return for payment of premium and subject to all the terms of this **Policy** and the exclusions stated in **Section VIII. Exclusions, We** will pay on behalf of an **Insured** all sums in excess of the **Deductible** to which this insurance applies and for which an **Insured** becomes legally obligated to pay as **Damages** because of an **Injury** caused by an **Incident** in the performance of **Professional Services** by **You** or someone for whom **You** are legally responsible as provided in this **Policy**. The **Injury** must occur on or after the **Retroactive Date** shown on the **Declarations** and before this **Policy** or coverage for an **Insured** terminates. Any **Claim** associated with an **Injury** caused by an **Incident** must be first reported to **Us** in writing during the **Policy Period** or the **Automatic Extended Reporting Period.** The **Injury** must also be caused by an **Insured** under this **Policy.**"

29. Kevin Bell obtained his first professional liability policy from PSIC in 2010. At that time, Kevin Bell submitted an application to PSIC which stated that the name and address of his practice was Multi-Care Specialists, 3986 Maryville Road, Granite City, Illinois and his specialty was family practice. A copy of the application is attached as Exhibit D.

30. In the application submitted to PSIC by Kevin Bell he checked the box indicating that he performed minor surgery. When asked for additional information on this answer, Kevin Bell advised that the minor surgery involved mole and skin tag removal and laceration repair. Additionally, Kevin Bell did not check the box on the application indicating that he performed elective cosmetic plastic surgery.

31. The PSIC Policy contains the following Condition:

"**Section XI. Conditions**

* * *

2. Changes in Practice. If the location, nature, scope of **Your** practice or hazards insured against has changed from that which is stated on **Your** original application or renewal application, including but not limited to the changes described in items a. through h. below, **You** must inform **Us** immediately in writing of such changes. No change will be effective until a written request is received and approved by **Us**.

   a. Any change in **Professional Services** provided by **You** or someone for whom **You** are legally responsible;
   b. Any change in **Your** profession described in the **Declarations**;
   c. Any change in the location of **Your** practice;

32. Prior to the events alleged in the *Vesci* Complaint, Kevin Bell did not notify PSIC that in addition to operating a family practice at Multi-Care Specialists he supervised his wife, Stephanie Bell, who was providing sclerosing agent injections to patients to treat varicose or spider veins from the Bell's home. Since Kevin Bell never advised PSIC of this change in his practice, he cannot seek coverage under the PSIC Policy for the *Vesci* lawsuit, which arises from this undisclosed practice.

33. PSIC does not have duty to defend or indemnify Kevin Bell or Stephanie Bell for the *Vesci* Complaint because Kevin Bell did not comply with the Change in Practice Condition of the PSIC Policy.

WHEREFORE, Plaintiff, PSIC INSURANCE COMPANY, requests that this Court find and declare that PSIC does not have a duty to defend or indemnify Kevin Bell and Stephanie Bell in the *Vesci* Lawsuit.

Respectfully submitted,

By:

/s/ Thomas F. Lucas
One of the Attorneys for Plaintiffs, NCMIC INSURANCE COMPANY and PSIC INSURANCE COMPANY

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